THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.10840 of 2007

04.6.2007

Between:

Iqbal Ahmed Pasha, S/o.Madharsha

… Petitioner

AND

The Mandal Revenue Officer, Pitapuram Mandal, E.G.District

And others

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.10840 of 2007

ORDER:

Petitioner herein alleges that his father, late Madarsha, is owner of land admeasuring Acs.1.10 in survey No.562/2 situated in Pithapuram village in East Godavari District under registered sale deeds dated 01.10.1987 and 05.1.1987. After death of his father, petitioner succeeded to the property and is in possession of the same. First respondent issued notice in Form-2 under Rule 3 of Andhra Pradesh Assigned Lands (Prohibition of Transfers) Rules, 2007 (the Rules, for brevity) alleging that the petitioner is in occupation of assigned land in contravention of provisions of Section 3 of Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1997 (the Act, for brevity). After receiving the said notice, petitioner submitted explanation on 14.5.2007, and that the matter is statedly pending before first respondent but still the petitioner filed the instant writ petition seeking invalidation of the impugned notice alleging that the land purchased by his father is not assigned land nor it is a Government land.

In a recent unreported judgment in W.P.No.6934 of 2007 dated 13.4.2007, after referring to the provisions of the Act and while indicating the possible defense/ defenses to the action initiated for resumption of the land under Section 3 of the Act, this Court observed as under.

> When action is initiated and a notice in Form-I is issued to the person in occupation of the assigned land, the possible defences could be (i) that the land in possession of the recipient of the notice is not assigned land; (ii) that there was no transfer of assigned land as contemplated under Section 3(2) of the Act; (iii) that assigned land was purchased by landless and poor person in good faith for valuable consideration from the original assignee; (iv) that Section 6 of the Act exempts the transfer of land from the provisions of the Act; (v) that the transfer of assigned land was permitted by

> the District Collector under Section 5 of the Act; and (vi) that the land was assigned without condition of non-alienation. There could also be an objection to such notice that in an earlier enquiry authorities already treated the land as not covered under the Act. In all these situations, it is certainly a matter for enquiry by the authorized officer and lack of jurisdiction cannot be presumed readily. Even where the case does not fall under Sections 3(2), 5 and 6 of the Act still unless and until enquiry is conducted as contemplated under the Act and the Rules, no conclusion can be drawn. As the enquiry is still pending before the third respondent, it would not be proper for this Court to make any observations or record passing remarks on the nature of the land or the nature of occupation of the land by the petitioner. These are the matters for enquiry before the third respondent.

In this case, learned Counsel for the petitioner contends that the land purchased by petitioner's father is not assigned land and, therefore, the Act has no application. Even in such an event, it is a matter for enquiry and the petitioner can raise all such defenses and explanation. Petitioner submitted explanation in response to the show cause notice and, therefore, writ petition would not lie. The first respondent may dispose of the matter within a period of two weeks from the date of receipt of a copy of this order without further explanation from the petitioner.

The writ petition, with the above observation, is accordingly dismissed. No costs.

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(**V.V.S.RAO, J**)

June 04, 2007.
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